

Attac
Exhibit # 1

Subject: TX12010-00228

Public Hearing Date: 10/25/10
10/14/2010 04:27 PM



Pumphrey's Funeral Home Parking Lot

Linda Brunett o pmarcuccio

Cc: jbritton, pgajewski, mpierzchala, bnewton

History: This message has been forwarded.

Dear Mayor Marcuccio,

As you are aware, Pumphrey's Funeral Home is in the process of trying to get a text amendment to enlarge their parking lot. I am very much in favor of this text amendment. I have lived at 12 Williams Street for 45 years, and have endured the parking nightmares for most of my life (and my parents before me).

There have been times when I have come home and found a car blocking my driveway, or in one instance actually *in* my driveway. A more constant and worrisome factor is when cars (especially vans or SUV's) are parked on either side of my driveway, it makes it impossible to see if cars are coming. I cross my fingers and hope that nothing is coming – I fear that one of these days I will be hit by an oncoming car. This is an issue for everyone who has a driveway on the street.

Another worry is that when cars are parked on both sides of the street, fire trucks would have a very difficult time getting to any of the Williams Street houses. Cars also park past the "no parking" sign at the intersection of Falls Road and Williams Street. This makes it basically a one way street for cars trying to enter or exit Williams Street.

Regarding the issue of how the parking lot would look from West Montgomery Avenue, I have seen the drawings that Pumphrey's has commissioned and the landscaping would block any view of the lot from the street.

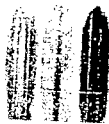
I know that others have voiced concerns about having an increase in the number of people attending funerals, or the funerals themselves. Since the size of the funeral home will not be changing, Pumphrey's cannot physically do any more business, even if they wanted to.

I hope you will please pass the text amendment.

Thank you for your efforts.

Sincerely,

Linda Brunett
12 Williams Street
Rockville, MD 20850



To: DPierro@mcleanschool.org,
pmaruccio@rockvillemd.gov, jbritton@rockvillemd.gov, pgajewski@rockvillemd.gov,
Cc: mpierzchala@rockvillemd.gov, bnewton@rockvillemd.gov, pumphrey@pumphreyfh.com,
londonlinda1@hotmail.com, Susan Swift/RKV, Deane Mellander/RKV, Sara Louise
Bcc:
Subject: Fw: Pumphrey Funeral Home Parking lot expansion

Dear Ms. Pierro -

On behalf of the Mayor and Council, each of whom have seen your email, thank you for your comments related to Zoning Text Amendment Application TXT2010-00228, William A. Pumphrey, applicant, to allow parking in connection with a nonconforming use on an adjacent lot.

Your comments will be marked as an exhibit, placed into the official record and considered by the Mayor and Council. As you know, the Mayor and Council will conduct a public hearing on this matter and will likely keep the record open for a period of two weeks following that hearing. This item will then come back before the Mayor and Council several more times before final resolution which will occur mid-December. For more information on this Text Amendment, please visit the City's website at:

http://www.rockvillemd.gov/government/commissions/hdc/2010/TXT2010-00228_11-10.pdf.

Unless otherwise noted, all meetings begin at 7:00 pm, and are televised on Rockville 11. Additionally, any Mayor and Council meeting can be viewed at any time, by going to www.rockvillemd.gov. Click on Video on Demand, then Mayor and Council meetings.

Again, thank you for your interest and for taking the time to write. The Mayor and Council appreciate the feedback they receive as they deliberate the important issues related to this proposed Zoning Text Amendment Application.

Brenda Bean

Brenda F. Bean
Deputy City Clerk
111 Maryland Avenue
Rockville, Maryland 20850
(240) 314-8280 - Direct
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bbean@rockvillemd.gov
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Exhibit # 2

Subject: TX 2010 - 00228

Public Hearing Date: 10/25/10



Pumphrey Funeral Home Parking lot expansion

Darlene Pierro to: pmaruccio, jbritton, pgajewski, mplechala, bnewton

Cc: pumphrey, londonlinda1

10/19/2010 07:43 PM

History: This message has been forwarded.

Mayor Marcuccio and City Councilmembers:

Please see the attached letter in support of the parking lot expansion at Pumphrey's Funeral Home. I plan to attend the public meeting on Monday, October 25 and I would appreciate the opportunity to speak in support of Pumphrey's. Thank you.

Darlene B. Pierro
222 West Montgomery Ave.
Rockville, MD 20850

301-294-4990

dpierro@mcleanschool.org

dbpierro@aol.com



Pumphrey support letter.doc

Dear Mayor Marcuccio and Councilmembers Britton, Gajewski, Pierzchala, and Newton

I write to you in support of the expansion of the Pumphrey Funeral Home parking lot.

As Pumphrey's closest neighbor at 222 West Montgomery Avenue, my house is on the corner of Williams Street, directly across from the funeral home. I have lived at this address since 1999 and I have had many occasions to interact with Will Pumphrey and the funeral home staff. In addition, I am the Head of McLean School of Maryland, a K-12 private school in Potomac. At McLean, we expanded our school (from K through 9 to K through 12), beginning in 2000, and a large part of our process involved neighbor relations and the inherent difficulties of expanding a school in a residential area. Thus, I feel well qualified to offer an opinion on this expansion project.

There are two points I would make to you: one is good neighbor relations and the other is safety:

1) Pumphrey's has been a good neighbor to all of us. When the inevitable difficulties occur, they have been quick to acknowledge their responsibilities and quick to correct the problems. Two examples: funeral home guests often park on my side of Williams Street. On several occasions, the guests have run into and destroyed the flower barrels located near my driveway. Pumphrey's has replaced the barrels and replanted the flowers, even though they had no obligation to do so. During the massive snowstorms last year, when we homeowners were using shovels and snow blowers to clear our sidewalks and driveways, I asked the Pumphrey staff if they would turn their snow removal equipment to my driveway. Again, they responded quickly and efficiently. I truly appreciate their efforts to be a good neighbor.

2) The most salient reason to support this expansion is safety. When there is an event at the funeral home (which happens almost daily), Williams Street is a tangle of cars - often parked in all directions on both sides of the street. The tiny parking lot, which holds less than 20 cars, fills quickly; and the valet parking cannot regulate where and how people park on the street. Our already-narrow two-lane street becomes a one-lane street at best. As a homeowner with a driveway on Williams Street, I often find it extremely difficult to access my driveway because of the parked cars and the cars in transit, waiting on the street. If emergency equipment needed to use Williams Street either to tend to a Williams Street resident or to drive from West Montgomery Avenue to Great Falls Road, that equipment would find it difficult, if not impossible, to pass by. In an emergency, the personal and residential safety of Williams Street homeowners would be severely compromised.

No doubt, there are opponents to this plan. That is unfortunate because to oppose this plan is to oppose the safety of the residents of Williams Street. If the objection is visual, the large open area where the expanded parking lot would be constructed can be easily landscaped with shrubs, trees, and perhaps an earth berm to shield the view from West Montgomery Avenue. There are a large number of mature plantings on both the west and south ends of the plot. And this parking lot will certainly be less offensive to the historical nature of our neighborhood than the construction that has occurred on the old Buckingham Estate and Chestnut Lodge.

I would urge the Mayor and Councilmembers to approve the text amendment that would permit this expansion of Pumphrey's parking lot. This historic commercial business, tucked into our historic residential neighborhood, has worked to ensure positive neighbor relations. Without the parking lot expansion, the funeral home cannot - even if they want to - alleviate the congestion on Williams Street and improve the safety of the street for its residents.

Thank you for your attention.

Darlene B. Pierro
222 West Montgomery Avenue
Rockville, MD 20850
301-294-4990
dbpierro@aol.com

dpierro@mcleanschool.org

October 21, 2010

Mayor and Council
City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

RE: Zoning Text Amendment TXT2010-00228;
Comments in SUPPORT

My name is Will Pumphrey and I am the 6th generation of the Pumphrey family to be involved with the funeral home. I am the Vice President of the company and the General Manager. Many of you have been to our funeral home and know first hand of the service we offer the community.

The reason that we are proposing to expand our parking lot is to try and get as many cars off of neighborhood streets as possible. Period. This proposal is not going to affect the funeral home, nor its operations. The beneficiaries of our proposed parking lot expansion will be foremost, our neighbors and secondly the citizens of Rockville that visit our funeral home.

As you all know, we take pride in the appearance of our funeral home and our property. Our proposed parking lot will be screened with trees, bushes and seasonal flowers. We intend to beautify our property with this proposal, not detract from it. Once the plantings have matured, which should only take a few years, there will be no evidence of the parking lot from W. Montgomery Avenue. This proposal will be a benefit all the way around to the West End and to Rockville.

From a historical context, it should be pointed out that the vast majority of funeral homes are located in residential neighborhoods. This is due to the fact that funeral homes are one of the oldest businesses in the United States and most funeral directors lived in their funeral home, as two generations of my family did. In fact, we are in the top 100 of the oldest family run businesses in the United States. The Mayor and Council should be proud of our historic background and embrace us as we try to continue to serve to the best of our ability.

Rumors I would like to lay to rest and fabrications I would like to clear up:

- 1) We will not be closing our Bethesda Funeral Home and moving all operations to Rockville. This is not physically possible nor has it ever been discussed.
- 2) We will not be expanding our Rockville Funeral Home building.
- 3) We will not be increasing the "size or frequency of funerals." Our building will only allow us to handle one funeral at a time and our building also limits the size of the funerals we conduct. For your information we conduct funerals at the funeral home at

10 AM and 1 PM and we hold visitations from 3 to 5 and from 7 to 9 PM. If we are expecting a very large visitation or service we recommend to the family to hold both events at a church or other location that can better accommodate them.

- 4) We will not be "paving the grass lot." We plan on using an environmentally friendly paving alternative.
- 5) The proposed parking lot will not bring more business from Bethesda to Rockville. Families choose one of our funeral homes that is in closest proximity to their residence, not due to our parking lot. Bethesda has plenty of parking, with 3 parking garages within ½ of a block.
- 6) There is speculation that our Bethesda location is "way under utilized." If you are not a part of my management team, there is no way you would know my business. I also don't see how this has any relevance to our Rockville parking lot proposal.
- 7) We do not regularly lose business due to the size of our parking lot. I stated that once or twice a year a family may choose another funeral home because our parking lot was too small. However, this is a very rare occurrence and I cannot tell you the last time this has happened. My statement has been twisted to fit a personal agenda.

To our astonishment, it has been suggested by those advocating against our proposed text amendment that a so-called "solution" to the parking issue would be to impose a time limit for the Pumphrey Funeral Home to exist after which we should be forced to close our operation. Such sentiment reflects a complete disregard for the historic character and context of the W. Montgomery Avenue Historic District and for Pumphrey's unquestionable place in it. I would have hoped that our family's laudable history of providing service as undertakers in Rockville since 1854 would have garnered more respect from residents of the City.

As stated above, our sole intent in requesting this text amendment is to help try to alleviate on-street parking related impacts felt by those residing closest to our property. We, more than anyone else, are concerned about protecting the historic character of our property and the W. Montgomery Avenue Historic District. But aside from just words of commitment in that regard, the Planning Commission and Historic District Commission, both of whom will review any Site Plan submitted for the parking lot, will no doubt make sure the parking lot plan adheres to the design principles and guidelines established by the City for historic districts.

Thank you for your consideration of these comments.

William A. Pumphrey
Vice President/General Manager



To: "Soo Lee-Cho" <SLCho@mmcanby.com>,
BNewton@rockvillemd.gov, DMellander@rockvillemd.gov, "Britton, John"
Cc: <JBritton@Schnader.com>, JWasilak@rockvillemd.gov, mayorcouncil@rockvillemd.gov,
MPierzchala@rockvillemd.gov, PGajewski@rockvillemd.gov, "Phyllis Marcuccio"
Bcc:
Subject: Re: Comment Letter re Text Amendment TXT 2010-00228 - scheduled for M&C Public
Hearing, Monday, October 25th

Dear Soo,

On behalf of the Mayor and Council, each of whom have seen your note, thank you for writing. As you know, the Public Hearing on this Text Amendment Application will be conducted at the Mayor and Council meeting this evening. The meeting, which is televised live on Rockville 11, will begin at 7:00 pm, and the agenda along with all related backup materials, are posted on the website should you wish to review them. Go to www.rockvillemd.gov, and click on Mayor and Council, then Agendas.

Please let Mr. Pumphrey know that his letter was received into the record and that the Mayor and Council appreciate having his feedback.

Brenda Bean

Brenda F. Bean
Deputy City Clerk
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Rockville, Maryland 20850
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"Soo Lee-Cho"

TO ALL:

10/22/2010 02:37:02 PM

From: "Soo Lee-Cho" <SLCho@mmcanby.com>
To: <mayorcouncil@rockvillemd.gov>, "Phyllis Marcuccio" <pmarcuccio@rockvillemd.gov>,
<MPierzchala@rockvillemd.gov>, "Britton, John" <JBritton@Schnader.com>,
<PGajewski@rockvillemd.gov>, <BNewton@rockvillemd.gov>
Cc: <SUllery@rockvillemd.gov>, <JWasilak@rockvillemd.gov>, <DMellander@rockvillemd.gov>
Date: 10/22/2010 02:37 PM
Subject: Comment Letter re Text Amendment TXT 2010-00228 - scheduled for M&C Public Hearing,
Monday, October 25th

TO ALL:

Please see attached comment letter sent on behalf of Mr. William Pumphrey in advance of the Mayor and Council's public hearing on this matter on Monday, October 25th.

Soo Lee-Cho, Esq.
Miller, Miller & Canby
200-B Monroe Street
Rockville, Maryland 20850

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W. Pumphrey_Ltr to Mayor & Council_10-21-10.doc

Dear City Council Members:

We, Thomas Weko and Bess Gonglewski, reside at 14 Williams Street, where we have lived since August 2001. We are writing to express our support for text amendment 2010-00228.

Below we outline the objections that have been raised to text amendment 2010-00228, and respond to them in turn. Those who object to the proposed text amendment do so chiefly on grounds described below.

1. Adopting the text amendment will establish a precedent that is bad public policy, since it will widen the scope for nonconforming uses.

In the September 17th Community Planning and Development Services staff report – and in the Planning hearing – staff clearly indicated that the proposed text amendment is narrowly drawn, and applicable only to this specific case, and that it will not authorize other nonconforming uses.

2. Adopting the text amendment will make it less likely that the Pumphrey property and the adjacent lot will revert, some day, to conforming uses.

Pumphrey's Funeral Home is likely the oldest family owned business in Rockville. It has been operating at this location since 1930, before Rockville adopted its system of zoning. To be blunt: Pumphrey's was here before we were born, and it will be here after we are dead. The Pumphrey family has absolutely no intention of quitting their business, and they have made it plain that the property will not revert to a residential use. Expanding the existing nonconforming use will not make the reversion to conforming use less likely -- since there is no prospect that the funeral home and adjacent lot will revert to a conforming use even under its current configuration.

3. Adopting the text amendment will have an adverse effect on an "adjoining property" (310 West Montgomery Avenue).

One adjacent property owner has legitimate concerns about the implications of off-street parking. Their concerns have been sensitively addressed by Pumphrey's in their landscaping decisions. The proposed parking facility will be more distant to their home and much more heavily screened from their view than the current parking facility – which is to say, Williams Street – is to our homes. The other properties adjacent to Pumphrey's have consistently expressed their support for the text amendment.

4. Adopting the text amendment will have an adverse effect on our residential neighborhood.

The status quo already has an adverse effect on our residential neighborhood. Those of us who live on Williams Street are adversely affected by the absence of significant on-site parking at

Pumphrey's Funeral Home. The proposed text amendment would change the location of the *de facto* parking lot from Williams Street to an adjacent lot and substantially mitigate the adverse effects on funeral parking on our neighborhood.

Like our neighbors, we believe that Pumphrey's Funeral Home has been a very, very good neighbor, both in the care of its property and in the thoughtful management of traffic generated by their clients. Notwithstanding their vigilant efforts, extensive on-street parking has an adverse effect on our neighborhood, most especially on Williams Street.

- a. Inattentive visitors sometimes block driveways, or leave homeowners unable to safely exit their parking places.
- b. Careless motorists park or turn around in lawns adjacent to the street, and damage residents' cars that are parked on the street.
- c. Heavily attended viewings result in automobiles parked on both sides of Williams Street, reducing it to a one-way street. This blocks emergency vehicles and forces motorists into standoffs resolved by backing up the length of the street.
- d. Visitors to our homes are sometimes left with no place to park.
- e. The many thousands who visit Pumphrey's each year do not have access to a sidewalk on the south side of the street, and the sidewalk on the north side of Williams has neither a curb nor a grassy median between it and the street. When Williams Street is fully parked, traffic spills over into Forest Street, and pedestrian traffic crosses busy West Montgomery Avenue. Pedestrian safety is compromised by on-street parking, and removing cars to a parking lot would mitigate that risk.

Those who oppose text amendment 2010-00228 are entirely silent on the adverse effects of parking borne by our neighborhood. They set a higher store on their aesthetic vision than the daily experience of those who live here, and the safety of those who visit here. In opposing the text amendment, they propose that we on Williams Street continue to bear all these burdens, so that a lawn -- rather than a beautifully landscaped parking lot -- occupies this space on West Montgomery Avenue.

We on Williams Street already bear heavy burdens. We are the only through street between West Montgomery Avenue and Great Falls Road. Virtually every household in the West End of Rockville uses our modest street as a means by which to avoid the intersection of West Montgomery Avenue and Great Falls Road, as do school buses and parents traveling to Julius West Middle School, and delivery trucks. A traffic survey in 2002 showed that close to 600 cars per day used Williams Street. No residential street in the West End of Rockville feels the burden of arterial cut-through traffic more heavily than we do. Hence, Williams Street is now asked to serve triple duty -- as a parking lot, as a means to skirt the heavily congested Great Falls/West Montgomery intersection, and (only lastly) as a residential street that serves homeowners.

Fortunately, many in the West End community are sensitive to these concerns. On October 21st a heavily attended meeting of the West End Citizens Association debated the issue at length. Notwithstanding the fact that the President and Vice-President of WECA are outspoken opponents of the text amendment, a straw poll of the membership at the conclusion of the debate resulted in a vote of 25 in support of the amendment, 20 in opposition, and 5 abstentions.

5. *It is not necessary to adopt the text amendment, since there must surely somehow be other ways to ameliorate the problem without the authorization of expanded off-street parking, such as permit parking, restricting one entrance to the street, or the extensive use of valet parking.*

We who live here and best know the realities on the ground have mulled these proposals over, but we cannot see any viable alternatives. Permit parking is an ideal way to keep non-residents off a street, and it allows homeowners near Metro stations (or other high volume commercial destinations) to prevent non-resident parking. Unfortunately, this is not a solution that can be put into place here, since it would deprive funeral home visitors of an opportunity to park -- and put Pumphrey's out of business. Or, it would compel them to park on Forest, Wall, and other streets in the West End -- which would increase the risk to visitors to Pumphrey's, and burden our neighbors. Further, it would make it impossible for a not-for-profit organization, the Danish Social Club of Washington DC, to continue its longstanding use of 16 Williams Street as their social club, since its guests also require parking on Williams Street.

Valet parking is likewise not a solution. This system works well when visitors swiftly drop off a car, and valets deposit it in a nearby lot. However, without a dedicated parking facility nearby, this arrangement is unworkable and uneconomic. That is precisely what we are lacking: a dedicated parking facility. Imagine trying to get the automobiles of sixty visitors down to, say, Julius West Middle School (6/10th of a mile away), and then bring them back as visitors exited. This would take a veritable fleet of valets to operate, since visitors arrive and depart not en masse, but in small groups. And it would generate a steady stream of traffic up and down Williams Street as valets moved the cars to another site!

Making it possible to enter Williams Street from only one end -- say, West Montgomery Avenue -- would not ameliorate the problem, either. Visitors would still arrive, as they currently do, and park on Williams. Only now they would be compelled to exit by way of Great Falls, and nothing would be changed. Forbidding parking on one side of Williams would simply push cars further away -- to Wall, Potomac, and Forest, presenting the same problems we've outlined: increased risk to visitors and greater inconvenience to neighbors on streets adjacent to Williams.

So, we and our neighbors have concluded that there is only one solution, and that is expanded off-street parking. Naturally, we are keen to see this go forward with assiduous attention to the legitimate concerns of the adjacent homeowner, and to the aesthetic sensibilities of the community. We are confident that our good neighbor, the Pumphrey family, with their long record of excellent citizenship in the Rockville community, will proceed with alertness to both concerns.

Sincerely,

Thomas Weko and Bess Gonglewski
14 Williams Street
Rockville, Maryland

Pumphrey's Funeral Home Request to Expand Onsite Parking Capacity

to:

mayorcouncil

10/25/2010 10:37 AM

Cc:

pumphrey

Show Details

To: Mayor & Council of Rockville

Re: Pumphrey's Funeral Home Request to Expand Onsite Parking Capacity

I attended a recent West End Citizen's Association (WECA) meeting where the above topic was on the agenda for discussion. While our property is not immediately adjacent to the subject property, we are nearby neighbors in the West End and frequently walk the sidewalks and drive the streets adjacent to the subject property. Listening carefully to the comments and discussion at the WECA meeting I am prompted to offer the following thoughts regarding this deliberation.

Sincerely,

Paul D. Newman

8 Henson Oaks Lane • Rockville, MD 20850

NewmanP@mindspring.com

Reasons to Deny:

1. Impact on adjacent neighbors/properties
2. Non-conforming use should not be expanded
3. Spot-zoning is not desirable

Reasons to Approve:

1. Most adjacent neighbors support the request.
 - a. Neighbors on Williams St and Forest Ave appreciate Pumphrey's efforts to reduce the impact of the business on their properties. Further, the parking lot can be expected to reduce the number of visitors crossing West Montgomery Ave without a crosswalk, which will improve pedestrian safety.
 - b. One neighbor immediately adjacent to the west expresses reasonable concerns about increased activity adjacent to their yard. But a counter argument could be made that no property owner is guaranteed inactive use of an adjoining property. In fact, the proposed use likely incurs less activity and noise than a conforming residential use because (1) the Pumphrey's property will be inactive and quiet except for scheduled funeral events, and (2) by their very nature funerals and the visitors they attract are quiet, respectful activities. Further, Pumphrey's has proposed significant landscaping to buffer the parking lot use. If the proposed screening is inadequate then you should discuss revising the proposed screening plan rather than discarding the entire plan.
2. The proposed parking lot is not intended to expand the non-conforming use. No expansion of the building or the business is proposed, and the size and scope of the existing business is limited by the capacity of the house rather than the parking. This proposed lot is an effort to be a better neighbor (see #1a above) and to maintain the existing business, not to expand. In fact,

it could be said this change is actually a reduction of impact by a non-conforming use (not an expansion) by reducing the overflow parking on neighborhood streets.

3. Most would agree that spot-zoning is not desirable and should be avoided. But there is a process for special exceptions and to amendment regulations expressly for the purpose of adjusting the law on a case-by-case basis when a worthwhile exception arises. Each of those cases is to be evaluated on its own merit. This is such an occasion. We take great care when we adjust the zoning and land use around landmark properties such as Chestnut Lodge and the Red Brick Courthouse to preserve their setting and history. But when the evolving traffic conditions suggest a change is needed, and a reasonable approach can be defined, then we do so.
4. Pumphrey's is a landmark property in Rockville. It is an icon for the community as well as passers-by that recognize the stately, well-maintained, well-lit house on West Montgomery Avenue and a familiar and attractive property. When the caretaker of such a property expresses concerns about their negative impact on their neighbors, and brings forward a plan to remediate that impact, and proposes to implement this plan at their own cost, we should not refuse that gesture.
5. Proposing pervious surface, thereby creating less impact on water runoff than building a house on that lot.

Dear Madam Mayor and Council Members,

Although, I was determined not to get involved in this matter, I feel compelled to contribute my thoughts to the issue coming before you this evening regarding the application for a text amendment proposed by Pumphrey's Funeral Home. I attended the WECA meeting last week and heard the testimony of many people in favor of the amendment. Almost all of them live on Williams Street and spoke in favor of passing the amendment because of what a good neighbor Pumphrey's has been and how nicely they keep their property (meaning "get their patrons' cars off our street"). I do not understand the "good neighbor" label, since they complained about blocked driveways and damaged cars caused by Pumphrey's patrons. To my mind, that is not a good neighbor. I do compassionate with those residents, and feel that they, in fact have been the good neighbor to Pumphrey's, but that Pumphrey's has not reciprocated. When Mr. Pumphrey was questioned about alternative solutions to the parking/traffic problems caused by his patrons, i.e. offsite valet parking, he huffily stated that "that would be too expensive." He seemed to be solely concerned about his business and not about his neighbors or the City of Rockville.

It seems to me that there are other viable solutions to the problem. Offsite valet parking seems like a great idea - the Rockville Methodist Church has an overflow parking lot on West Jefferson, which is hardly used during the week, and other sites could be explored. Another alternative might be to limit parking to one side of Williams Street or have the street designated as permit parking only. This would put the parking burden on Pumphrey's (where it should be) and not on the residents. These approaches work well in other Rockville neighborhoods. I know this firsthand since I live on Harrison Street directly across from the Presbyterian Church, which is a very active church, almost 24/7. Having a church that serves the entire neighborhood is a wonderful thing, but it does cause traffic and parking problems. They hold frequent funerals (some of them quite large), the A-1 (Asian) Learning Center meets there every day (with parents dropping off and picking up children), the Rainbow House women's shelter is housed in the Church, and several AA and other organizations meet there each week. The traffic/parking issues are lessened but not eliminated by Harrison Street and Upton Street being permit parking only from 8 am to 5 pm on Monday through Friday and Harrison Street is parking on one side only on Sundays. I feel strongly that other alternatives should be exhausted before the zoning ordinance is amended to accommodate a single business.

To summarize, my concern is threefold: (1) Pumphrey's Funeral Home is a non-conforming use and is only in the neighborhood by virtue of being grandfathered in, since they existed before the zoning ordinance was enacted. The zoning ordinance states that non-conforming uses cannot be expanded ever. Period - no discussion. To put in a parking lot that is larger than the existing facility certainly constitutes expanding the non-conforming use; (2) Pumphrey's Funeral Home is located in the

Historic District of Rockville and a surface parking lot (no matter how gussied up or disguised) is still a parking lot and does not belong in the Historic District; and (3) most importantly, to pass a text amendment to accommodate one business (no matter how good a neighbor they are) will open the door to other entities applying for a "limited" text amendment that would benefit their business only. This is not the intent of the zoning ordinance. The zoning ordinance was enacted as the "big picture" tool to protect all the citizens of Rockville. To start allowing "spot" zoning, will diminish the power of the ordinance, create a precedent for further exceptions, and adversely affect the City as a whole.

Enough said. Thanks for listening.

Maggie Hadley
215 Harrison Street
Rockville, MD 20850

Bill & Heather Luckey
11 Williams Street
Rockville MD 20850
(301)610-9103

October 22, 2010

John Britton
Council Member
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

Dear Mr. Britton:

This letter is in reference to the proposed text amendment to the city zoning **TXT2010-00228** that will be discussed at the October 25, 2010 meeting of the Rockville City Council. Unfortunately, a business trip will prevent me from attending that meeting in person to speak directly to the issue, so I writing to present my position.

As next-door neighbors to Pumphrey's Funeral Home, my wife and I are strongly in favor of the proposed text amendment as one of the necessary steps to increase on-site parking at their facility. Our support is for moving forward, recognizing that this is not a *carte blanche* support for any parking lot. We appreciate all the steps in the process as we think any changes to the property need to be in tune with the character of the neighborhood. We understand the concerns of adjacent property on Montgomery Avenue and think the final design needs to respect the concerns of all neighbors, including ours. I will briefly outline our rationale for this position, beginning with our self-interests. However, my position is not based solely on the benefits to our family. We see the parking lot as a benefit to the Rockville community as a whole.

Congestion: The current situation, with limited parking on Pumphrey's property, often results in significant congestion on Williams Street during visitations and funeral services. This congestion, with cars parked on both sides the full length of Williams Street, frequently make it not only inconvenient for residents of Williams Street, but dangerous for mourners coming to services and for us and our personal visitors. During busy funerals, traffic is limited to one-way, with cars coming the other way having to back the whole way down the street. It is very difficult to get out of our driveway, and impossible for our own visitors to park. We recognize that the additional parking will not fully eliminate congestion on our street. However, I believe it would go a long way to alleviate much of it.

Safety. There are a host of safety concerns with the current situation. We are fortunate to have off-street parking but it can be difficult and even dangerous to pull out of our alleyway during heavily-attended funerals or visitations. One of our friends hit an oncoming car as she was attempting to pull out between SUVs parked on each side of our driveway. People dropping of our children often have to let them out in the middle of the street. Our concerns are greater for those coming to Pumphrey's as they exit their vehicles or cross Williams Street when it has been reduced to single-lane traffic. The greatest danger is that with larger events some mourners end up parking on Forest Avenue and have to cross Montgomery Avenue without a

light. There is a serious or even fatal pedestrian accident waiting to occur. Additional on-site parking would eliminate the need for parking on the north side of Montgomery Avenue.

Courtesy and Community Character. Pumphrey's has been an outstanding member of the Rockville community at this location for 80 years. This has been one universal point of agreement through the sometimes contentious discussions I have observed. I believe we owe them a degree of reciprocity. There is value in the convenience the additional parking would bring to those who attend services, a group whose average age is well above the community average. Though I have heard little discussion about this topic I think we need to consider the those who are come to Pumphrey's for funerals and visitations. Finally, the Pumphrey's structure is a Rockville hallmark on one of the major entrances into the city. We should be willing to work with the Pumphrey family to maintain its status for another 80 years.

I realize this is a very difficult and challenging decision. I listened very closely to the spirited discussion at the West End Citizens' Association, one that culminated in a "straw vote" in support of the general concept of the parking lot by a 55% to 45% split. Having a vested interest I also paid close attention to reports and discussions from the Planning Commission, one that resulted in a 3-2 split and request for a minority report, and the staff report from the Historic District Commission (HDC.)

My understanding of the Planning Commission deliberations and HDC staff report is as follows. From a planning perspective Pumphrey's is a non-conforming use, a situation from planning theory that ideally would eventually disappear. The staff report for the HDC indicates a preference for Montgomery Avenue to have a consistent view with historic houses visible along the full length of Montgomery Avenue. I cannot argue with the specific perspective of either group. Your challenge is to address the broader "Rockville view." Pumphrey's has been non-conforming since 1932 when zoning was introduced to Rockville. This 78 year history indicates that a funeral home in a residential area is part of our city's heritage. Similarly, the Pumphrey family has maintained ownership of the adjacent property for 80 years, the last 40 maintaining it as a vacant lot. Yet all agree with we have major issue with parking, congestion and safety.

We appreciate your careful and thoughtful consideration of the varied and divergent issues involved in this text amendment.

Sincerely,

Bill and Heather Luckey

Statement by Jacques Gelin on Item 10, agenda, October 25, 2020
gelinjac_verizon_mail

to:

pmarcuccio@rockvillemd.gov, pgajewski@rockvillemd.gov, jbritton@rockvillemd.gov,
bnewton@rockvillemd.gov, mpierzchala@rockvillemd.gov
10/25/2010 03:26 PM

Cc:

"glenda evans"

Show Details

Exhibit No. 8

TXT2010-00228

Public Hearing: 10/25/10

10. Public Hearing - Public Hearing on Zoning Text Amendment TXT2010-00228, William A. Pumphrey, applicant, to allow parking in connection with a nonconforming use on an adjacent lot

I live at 105 South Van Buren Street and am the corresponding secretary of the West End Citizens Association. At the October 21, 2010, general meeting WECA's membership, by a narrowly divided vote, supported the text amendment. WECA's president, Susan Prince, will be submitting a statement on behalf of our organization; I make this submission in OPPOSITION to the proposed text amendment on my own behalf.

The proposed text amendment is a land use matter only. The fact that the Pumphrey funeral home has been in business in Rockville for about 80 years is irrelevant. Likewise irrelevant is the fact that Pumphrey has been a good neighbor and kept up its property. It is in Pumphrey's advantage to do so.

The plain fact is that is that Pumphrey's existence in a residential area is a non-conforming use, and I submit that any long-continued use of land as a non-conforming use should be discouraged, not enlarged. I understand that many residents of the adjacent streets are inconvenienced by traffic generated by visitors to Pumphrey's, which is regrettable. The point is that they all purchased their homes after Pumphrey's funeral home had been established, with full knowledge of the burdens on the neighborhood that Pumphrey's non-conforming use had already created.

I realize that the proposed text amendment is narrowly drawn so that it applies only to the Pumphrey funeral home. Nonetheless, the proposed text amendment, if enacted, would establish a bad precedent in derogation of the City's zoning ordinance. It would allow the owners of other non-conforming uses to apply for text amendments that enlarge in some fashion their non-conforming uses. This would violate the basic purpose of allowing a non-conforming use in the context of the City's zoning ordinance only under the most exceptional circumstances.



Exhibit No. 9
TXT2010-00228
Public Hearing: 10/25/10

City of Rockville

MEMORANDUM

October 18, 2010

TO: Mayor and Council
FROM: Historic District Commission
SUBJECT: HDC2011-00519: Recommend Denial on TXT2011-00519, William A. Pumphrey
Amend Zoning Ordinance to allow expansion of parking to an adjacent lot

Recommendation:

The HDC recommends denial of the proposed text amendment for the Pumphrey's Funeral Home on the basis that expansion of its parking on the adjacent residential lot will be out of scale and out of character with the overall historic district. The HDC also noted that taking the approach of a text amendment, although intended to affect only Pumphrey's, would also have the effect of opening up the historic district to other parking expansions in the future on non-conforming uses, thus undermining the effectiveness of the historic district in maintaining the character of the community. The HDC noted that the current parking is appropriately located behind the main structure and is in-keeping with the residential character of the historic district. Current parking complies with historic district guidelines that are followed by other properties in the historic district. Increasing the parking area at this site will introduce parking of a commercial scale onto a residential lot. This will have a negative effect on adjacent and confronting properties, and will be out of character with the designated historic district.

Process Summary:

The Historic District Commission (HDC) held a Courtesy Review on October 21, 2010 to review the proposed text amendment, as the subject property is located within the West Montgomery Avenue Historic District (also listed in the National Register of Historic Places). While most text amendments are not routed to the HDC, the Commission requested the opportunity to hear a presentation and to make a recommendation to the Mayor and Council on the potential impacts on the City's largest historic district.

After a brief presentation by staff and the applicant, the HDC heard public testimony from an adjacent property owner in opposition to the text amendment. The HDC deliberated the issues, noting that Pumphrey's is a historic business in the City that is mentioned in the National Register nomination for the district. The representative from Pumphrey's stated that the funeral home had every intention of remaining at this location, and that this was conceived as a convenience to the neighborhood.

cc: Historic District Commission
Jim Wasilak, Chief of Planning
Susan Swift, Director CPDS
Deane Mellander, Zoning Administrator



**Extension of the Pumphrey Funeral home non-conforming use
Dennis Cain to: Mayor and Council**

History:

This message has been replied to.

Exhibit No. 10
2010-00228
Public Hearing: 10/25/10

10/25/2010 04:29 PM

Madam Mayor and City Council Members:

As a 42 year resident of the West End Neighborhood of Rockville, I wish to express my opposition to the proposed compounding of the non-conforming use of the site along West Montgomery Avenue by the addition of a large parking lot on the adjacent property. I attended a meeting of the WECA last week where this was discussed and the sentiment was split roughly half for and half against. The primary comments of the supporters were they would like to have the itinerant parking removed from their street and that "Pumphreys is a good neighbor". This has been the slogan of Pumphrey's for decades and has adorned the back page of the WECA newsletter all these years. The community members are after all prospective clients and it is good business to maintain a well kept facility on the main street of this neighborhood. Furthermore, the traffic generated by this non-conforming use has been a problem for years and was certainly a consideration when those living on the street decided to buy their homes there.

A major concern I would express is that it is the additional parking lot will not, in my opinion, solve the problem of transient parking. Those coming to the funeral home after a new parking lot is added will, in all probability, continue to park on the neighborhood streets as long as spaces are available. Better alternatives might be developed via altered traffic patterns on the street which could also eliminate use of the street as a neighborhood cut through. This has been a problem for years! Meeting of the city traffic engineers with the impacted neighborhood should be a first step.

Regarding the meeting process, there was significant confusion regarding the meaning of denial of the proposed amendment in comments made by Ms Swift, Director of Planning, in response to questions. She indicated that in general the extension of the non-conforming use usually meant that the city supported the continued long term use for the non-conforming purpose and conversely denial of the extension indicated a lack of support for the continued long term non-conforming use. Some questioned whether rejection of the amendment would be taken as an indication that the city opposed continuation of the Pumphrey Funeral Home, which, to many at the meeting, would be an unacceptable position to take toward a Good Neighbor of the West End.

Dennis Cain
502 Carr Avenue
Rockville MD 20850

TESTIMONY ON PUMPHREY TEXT AMENDMENT October 25, 2010

Good evening Madam Mayor and Members of the Council. My name is Jim Vitol and I live at 11 Wall Street, around the corner from Pumphrey's Funeral Home.

In examining the Pumphrey text amendment issue many people want to classify this as a parking lot problem and granting the text amendment as a solution to the parking problem. I disagree that parking is THE problem. Parking is a symptom of the real problem which is that we have a nonconforming use in the West End which is incompatible with a residential neighborhood.

The theory behind a nonconforming use is that it is incompatible with the uses allowed in that zone by the zoning ordinance and the law as stated by the Maryland Court of Special Appeals is that over time it will "wither and die". The court has further said that the basic premise of the zoning ordinance is to restrict rather than expand nonconforming uses.

Pumphrey has turned the "nonconforming use being incompatible with the neighborhood" upside down. Their position is that because we are incompatible and a nuisance and inflict problems on the surrounding neighborhood that we should be allowed to expand our operation to help solve the problem. The right answer is as the Court stated - it should go away. I ask you to consider adding a sunset provision to the zoning ordinance which would terminate funeral homes in residential neighborhoods in 10 years.

However, in the meantime we still have the parking and traffic on Williams Street to deal with. Here are two possible solutions.

1. Turn Williams Street one-way from Falls Road to West Montgomery Avenue. This will reduce most of the cut-through traffic which avoids the light at Jefferson and Falls by turning right onto Williams Street. This will require a widening of the Falls Road/Williams Street intersection to make the turn easier going south on Falls Road.
2. Eliminate parking on the east side of Williams Street and leave the parking on the west side which has the sidewalk. This will open up the street to allow a better flow of traffic and keep it open at all times for emergency vehicles.

Another reason to deny this text amendment is that a parking lot on West Montgomery is not in keeping with the historical character of the gateway entrance to the Town Center. While it may be done attractively a parking lot is still a parking lot. It will eliminate the possibility of ever returning this lot as well as the Pumphrey lot to residential use and restoring the streetscape of residential houses in this block of West Montgomery Avenue.

Finally, while this text amendment is narrowly drawn, granting this special privilege to one nonconforming use opens the door to granting it to many others. How do you say yes to one and no to others who come in with their "narrowly" drawn text amendments? All nonconforming uses must be treated equitably and the same. The answer is to say no to expansion for all nonconforming uses.

For all the above reasons I request that you reject the requested text amendment.

Sincerely,

Jim Vitol
11 Wall Street

WECA Testimony regarding agenda item:

Public Hearing on Zoning Text Amendment TXT2010-00228, William A. Pumphrey, applicant, to allow parking in connection with a nonconforming use on an adjacent lot.

Good evening Madam Mayor and Members of the Council. My name is Susan Prince and I am President of the West End Citizen's Association. I am here to speak as an official representative of WECA and have been directed to do so by the membership.

We held one of our bi-annual general membership meetings last Thursday (October 21) and the primary topic of discussion was the proposed text amendment submitted by Pumphrey's Funeral Home.

We had a very good turnout for the meeting with 50 residents in attendance. Also at the meeting was William Pumphrey as well as several representatives from the City.

The format for the meeting was similar to a public hearing where any resident could address the group and give their opinion on the proposed amendment. Quite a few residents spoke with comments generally evenly divided both for and against the proposal.

Some of the residents who spoke in favor of the parking lot live on or near Williams St. which is most directly affected by the parking and traffic nuisance generated by Pumphrey's. Of primary concern are blocked driveways, sideswiped cars, pedestrian safety (there is a sidewalk on only one side of the street) and the unsafe situation of two way traffic on a narrow street when both sides are full of parked cars (a Mexican standoff situation that sometimes results in drivers having to back up). Others spoke in support of Pumphrey's as a good neighbor; one who has worked hard to maintain their property and who would take the same care in expanding the parking lot.

Other residents who spoke out against the parking lot cited other concerns such as the precedent setting nature of this request, the detrimental impact on the neighbor directly adjacent to the proposed parking lot and the question of whether a larger parking lot will actually lead to fewer cars parking on Williams Street. Others echoed the rationale provided in the Planning Department and Historic

District staff reports stating that expansion of a non-conforming use in a historic/residential area should not be approved. In particular the intent of the ordinance is to have nonconforming uses eventually cease and be replaced with uses allowed in the zone.

At the end of the discussion, we decided to take a straw vote to see which way the membership was leaning. I want to stress that as a straw vote, there was to be no action taken as a result of this vote. It was strictly to take the "temperature" of the membership.

The results of the vote were 25 votes for the amendment to allow the parking lot, 20 votes against, and 5 abstentions.

As the vote was relatively close, we decided not to take an official position and instead, a motion was made and approved for the President to report the results of our straw vote to the Mayor and Council.

Hence my testimony tonight.

Respectfully,

Susan Prince

President

WECA

Exhibit No. 13
TXT2010-00228
Public Hearing: 10/25/10

Support in favor of proposed Pumphrey Funeral Home new Parking Lot
Mary Caroline Colletti

to:

pumphrey, mayorcouncil

10/26/2010 05:13 PM

Show Details

Dear Ladies and Gentlemen,

As a Rockville Resident, patron and visitor of Pumphrey Funeral Home, I would like to express my support for the proposed Parking Lot. The Pumphrey family business is acting as a responsible, thoughtful corporation, offering the community a positive alternative, in an attempt to assist with the negative impacts inclusive of the neighborhood street access, safety and parking.

I have personally experienced the challenging parking and narrow street access, lack of sidewalks on one side of Williams Street as well as the consistent concern of Pumphreys, to deal with the multiple related issues.

This is a clear case of a local business committed to the City and Residents, striving to provide a sound concept for alleviating neighborhood street congestion, support the need for off-street parking and curb negative pedestrian impacts.

Let us recognize Pumphreys for the asset they are attempting to offer the City. The arguments of unintentional future uses or a precedent are simply unfounded, in this case.

Most sincerely,

Mary Caroline Colletti
90 Monroe Street #801
Rockville, Maryland 20850
301.610.7717
mc2painter@gmail.com

October 21, 2010

Mayor and Council
City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

RE: Zoning Text Amendment TXT2010-00228;
Comments in SUPPORT

My name is Will Pumphrey and I am the 6th generation of the Pumphrey family to be involved with the funeral home. I am the Vice President of the company and the General Manager. Many of you have been to our funeral home and know first hand of the service we offer the community.

The reason that we are proposing to expand our parking lot is to try and get as many cars off of neighborhood streets as possible. Period. This proposal is not going to affect the funeral home, nor its operations. The beneficiaries of our proposed parking lot expansion will be foremost, our neighbors and secondly the citizens of Rockville that visit our funeral home.

As you all know, we take pride in the appearance of our funeral home and our property. Our proposed parking lot will be screened with trees, bushes and seasonal flowers. We intend to beautify our property with this proposal, not detract from it. Once the plantings have matured, which should only take a few years, there will be no evidence of the parking lot from W. Montgomery Avenue. This proposal will be a benefit all the way around to the West End and to Rockville.

From a historical context, it should be pointed out that the vast majority of funeral homes are located in residential neighborhoods. This is due to the fact that funeral homes are one of the oldest businesses in the United States and most funeral directors lived in their funeral home, as two generations of my family did. In fact, we are in the top 100 of the oldest family run businesses in the United States. The Mayor and Council should be proud of our historic background and embrace us as we try to continue to serve to the best of our ability.

Rumors I would like to lay to rest and fabrications I would like to clear up:

- 1) We will not be closing our Bethesda Funeral Home and moving all operations to Rockville. This is not physically possible nor has it ever been discussed.
- 2) We will not be expanding our Rockville Funeral Home building.
- 3) We will not be increasing the "size or frequency of funerals." Our building will only allow us to handle one funeral at a time and our building also limits the size of the funerals we conduct. For your information we conduct funerals at the funeral home at

10 AM and 1 PM and we hold visitations from 3 to 5 and from 7 to 9 PM. If we are expecting a very large visitation or service we recommend to the family to hold both events at a church or other location that can better accommodate them.

- 4) We will not be "paving the grass lot." We plan on using an environmentally friendly paving alternative.
- 5) The proposed parking lot will not bring more business from Bethesda to Rockville. Families choose one of our funeral homes that is in closest proximity to their residence, not due to our parking lot. Bethesda has plenty of parking, with 3 parking garages within ½ of a block.
- 6) There is speculation that our Bethesda location is "way under utilized." If you are not a part of my management team, there is no way you would know my business. I also don't see how this has any relevance to our Rockville parking lot proposal.
- 7) We do not regularly lose business due to the size of our parking lot. I stated that once or twice a year a family may choose another funeral home because our parking lot was too small. However, this is a very rare occurrence and I cannot tell you the last time this has happened. My statement has been twisted to fit a personal agenda.

To our astonishment, it has been suggested by those advocating against our proposed text amendment that a so-called "solution" to the parking issue would be to impose a time limit for the Pumphrey Funeral Home to exist after which we should be forced to close our operation. Such sentiment reflects a complete disregard for the historic character and context of the W. Montgomery Avenue Historic District and for Pumphrey's unquestionable place in it. I would have hoped that our family's laudable history of providing service as undertakers in Rockville since 1854 would have garnered more respect from residents of the City.

As stated above, our sole intent in requesting this text amendment is to help try to alleviate on-street parking related impacts felt by those residing closest to our property. We, more than anyone else, are concerned about protecting the historic character of our property and the W. Montgomery Avenue Historic District. But aside from just words of commitment in that regard, the Planning Commission and Historic District Commission, both of whom will review any Site Plan submitted for the parking lot, will no doubt make sure the parking lot plan adheres to the design principles and guidelines established by the City for historic districts.

Thank you for your consideration of these comments.

William A. Pumphrey
Vice President/General Manager

KENNETH R. WEST
STANLEY D. ABRAMS
KEITH J. ROSA

PRACTICING IN MARYLAND AND
DISTRICT OF COLUMBIA

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FAX: (301) 951-1543

Exhibit No. 15
TXT2010-00228
Public Hearing: 10/25/10

JAMES L. PARSONS, JR.
OF COUNSEL

WRITER'S DIRECT NUMBER
(301) 951-1540
EMAIL: "sabrams@awsdlaw.com"

October 27, 2010

Honorable Phyllis Marcuccio, Mayor
City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

**RE: Zoning Text Amendment
No. TXT 2010 - 00228
(Pumphrey's Funeral Home)**

Dear Mayor Marcuccio and Members of the City Council:

I represent Megan and Phillip Bowen residing at 310 West Montgomery Avenue who reside next door to the proposed Funeral Home parking lot which currently is a vacant, separately subdivided R-90 Zoned lot. My clients are in opposition to the Text Amendment which would allow a currently prohibited expansion of the non-conforming use (i.e.: funeral home). I attended the public hearing on the Text Amendment, at which my clients spoke and I wish to comment briefly on some of the testimony and legal argument presented to you.

Initially you questioned staff on the nature of non-conforming uses. To increase your understanding of the restrictive nature of such uses and how Maryland Courts view such uses, I am including herewith certain pages from my book, Guide to Maryland Zoning Decisions, 4th Ed., Lexis Nexis Publishers, which summarizes cases on zoning issues including non-conforming uses.

Pumphrey's attorney made certain representations which are of doubtful validity. She maintained that the expanded parking area could be maintained as a separate use on a separate lot without resubdivision into the lot which contains the funeral home. This is erroneous. Parking would be the primary use of the second lot and is not a permitted principle use. It is an accessory use to some other use and since there is no other primary permitted use on the second lot, you cannot have an accessory use without a primary use. Thus, you would violate your zoning ordinance. Even if the second lot were resubdivided into the funeral home lot to create one larger recorded lot, this would not assist in bringing the use into conformance. The basic reason is the non-conforming use has a certain defined

geographic extent in addition to the structures and use on the property at the time it became non-conforming. As stated by the Maryland Court of Appeals recently in Maryland Reclamation Associates, Inc. v. Harford County, 414 Md. 1, 994 A.2d 842 (2010):

"It is long settled in Maryland law that a property is only protected against re-zoning by non-conforming use status if the property owner demonstrates that substantially all of the property was being used in a permissible means before a zoning change was enacted."

(414 Md. At 63, 994 A.2d at 879).

In the Maryland Reclamation case the original non-conforming use (i.e. industrial waste site) applied only to 24 acres of a 55 acre site and the remaining 31 acres were not part of the non-conforming use and could not be used to store industrial waste. Consequently, we submit that this text amendment cannot expand the geographic area of the original non-conforming use area even by resubdivision.


Counsel for Pumphrey's in response to an inquiry regarding what happens to the new parking lot if a funeral home use no longer occupies the site and I believe the response from counsel was that they could place a covenant on that property. Such covenants restricting use cannot be relied upon by either the Mayor and Council or subsequently by the Planning Commission in exercising decision making authority. Such covenants are often described by Court decisions as prohibited conditional zoning. See: Board of County Commr's of Washington County v. Manry Holtz, 65 Md. App. 574, 501 A.2d 489 (1985). In any event a unilateral covenant filed by a property owner which does not run to a named beneficiary can always be rescinded and released from the property records.

Finally, the Planning Commission supported in part, its recommendation of denial by the possible precedent that this amendment could provoke with the expansion of parking facilities associated with other non-conforming use is not the only precedent which you must fear. Another owner of a non-conforming use could request that a text amendment allow an extension which would permit a mix of uses to occur along with the original non-conforming uses or some other scenario and point to this amendment as precedent to contract the prohibition on extending non-conforming uses. The practical effect of this amendment is to concentrate this parking lot and its adverse effects on the only abutting property owner, not those separated by the adjacent alley and garage or by streets from the proposed lot in order to hypothetically reduce on-street parking for the added convenience of those property owners. As someone eluded to, those property owners knew of the funeral home and its effects on the on-street parking when they purchased their homes. When my clients

purchased their home, they didn't bargain for a parking lot, 7' from their property. Nor did they bargain for or rely upon the Mayor and Council expanding the non-conforming use, particularly since a previous request to expand the non-conforming use was denied.

We request that you follow the recommendations of your Planning Commission, HDC and City Planning Department and deny this Text Amendment.

Sincerely,



Stanley D. Abrams

SDA:dw
Enclosures

cc: Councilman John Britton
Councilman Piotr Gajewski
Councilman Mark Pierzchala
Councilwoman Bridget Donnell Newton
Dean Mellander, Zoning Supervisor
Megan & Phillip Bowen

within the scope of a nonconforming use, the Court indicated that the following factors should have been considered:

"(1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;

"(2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;

"(3) does the current use have a substantially different effect upon the neighborhood;

"(4) is the current use a 'drastic enlargement or extension' of the original non-conforming use." 39 Md. App. at 269-70, 385 A.2d at 104.

County Comm'rs of Carroll County v. Uhler, 78 Md. App. 140, 552 A.2d 942 (1989)

The burden of proving a nonconforming use is upon the party asserting a claim. A certification of a nonconforming use can only be made after hearing and determination of facts by the board acting in a quasi-judicial capacity.

A lawful nonconforming use is a vested right, but it is the aim of zoning to reduce as speedily as possible nonconformance to conformance, with due regard to the legitimate interests of all parties.

An "equipment storage yard" is a place where usable equipment is stored. When the equipment is not usable, it becomes junk, and the property upon which it is kept becomes a "junkyard."

County Council of Prince George's County v. E.L. Gardner, Inc., 293 Md. 259, 443 A.2d 114 (1982)

"Such nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values." (Citation omitted.) 293 Md. at 267, 443 A.2d at 118.

"Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses

with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. (Citations omitted.)

"Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. (citations omitted). These ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses." (Citations omitted.) 293 Md. at 268, 443 A.2d at 119.

Under the Prince George's zoning ordinance, the county council had no authority to grant a special exception for a sand and gravel processing facility as an adjunct to a lawful nonconforming sand and gravel mining operation. The court held that the processing facility constituted a change in the existing nonconforming use, prohibited by the zoning ordinance, in that each use was different with differing standards, regulations and requirements.

National Insts. of Health Fed. Credit Union v. Hawk, 47 Md. App. 189, 422 A.2d 55 (1980)

"Maryland case law permits continuing a non-conforming use, but does not permit the transmogrification of an approved nonconforming use into a new and different use. The latter constitutes an unlawful extension, even if there is no outward change in the appearance of the facility being used." (Citation omitted.) 47 Md. App. at 200, 422 A.2d at 61.

In the instant case, the transformation of a scientific society headquarters into a credit union was an unlawful extension of the prior nonconforming use.

Calhoun v. County Bd. of Appeals of Baltimore County, 262 Md. 265, 277 A.2d 589 (1971)

The burden of proving a nonconforming use is on the claimant of the use. This burden necessarily includes the burden of establishing the existence of a nonconforming use at the time of the passage of the prohibiting zoning ordinance. One important way of meeting this burden is to show that the existence of the use was known to the neighbors at the critical time.

See also *Richmond Corp. v. Board of County Comm'rs for Prince George's County*, 254 Md. 244, 256, 255 A.2d 398, 404 (1969); *Feldstein v. Lavale Zoning Bd.*, 246 Md. 204, 210, 227 A.2d 731, 733-34 (1967); *Vogl v. Mayor & City Council of Baltimore*, 228 Md. 283, 179 A.2d 693 (1962).

Wilson v. Mayor & Comm'rs of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977).

The Court restated the law applicable to nonconforming uses, which relates that the basic premise underlining zoning regulations is to restrict rather than expand nonconforming uses. An intensification of a nonconforming use is permissible as long as the nature and character of the use is unchanged and substantially the same facilities are utilized. This right is, however, limited in that the property owner does not have the right to subsequently change or add to the use a new and different use amounting to a drastic enlargement or extension of the prior existing use. The question of what is an extension or enlargement of a nonconforming use is ordinarily one of fact.

The unlawful extension of a nonconforming multi-family structure from two units to three units cannot be excused on the basis that it was not the act of the present owner but of a predecessor in title.

McLay v. Maryland Assemblies, Inc., 269 Md. 465, 306 A.2d 524 (1973).

The involuntary cessation of a nonconforming use (manufacturing company) due to lack of orders where the plant was kept open for business and the equipment was kept in working condition did not constitute either a discontinuance or abandonment of the use.

Gough v. Board of Zoning Appeals for Calvert County, 21 Md. App. 697, 321 A.2d 315 (1974).



November 1, 2010

The Mayor and Council of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

Re: Pumphrey's Funeral Home

Dear Honorable Mayor and City Council:

Peerless Rockville urges the Mayor and Council to reject the proposed text amendment that would allow Pumphrey's Funeral Home to expand its parking for the following reasons:

- The proposed parking lot on 304 West Montgomery Avenue is out of scale and out of character of the West Montgomery Avenue Historic District, the largest district in the City of Rockville.
- Approval would open other properties in historic districts to nonconforming uses.
- There is no guarantee that Pumphrey's will not go out of business. As a result, it will be much more difficult to return the property to the primary use of a single family residentially zoned lot.
- A parking lot does not ensure that people will park there. They will continue to park where they want especially if the business expands.

Peerless believes this proposal would adversely impact our long established historic district and will not serve the best interests of Rockville residents. We urge you to reject this proposal.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard O. Stoner".

Richard O. Stoner
President

A handwritten signature in dark ink, appearing to read "Mary A. van Balgooy".

Mary A. van Balgooy
Executive Director

Peerless Rockville Historic Preservation, Ltd.
PO Box 4262
Rockville, MD 20849-4262



Pumphrey's Zoning Text Amendment

Opryszko, Melissa C. to: MayorandCouncil@rockvillemd.gov

11/04/2010 12:53 PM

Dear Mayor and Council:

I would like to respectfully submit my views concerning the Zoning Text Amendment (TXT2010-00228) that Pumphrey's Funeral Home has submitted to enlarge its parking lot in Rockville. I currently reside at 720 Carr Avenue in Rockville and grew up just around the corner from Pumphrey's on Wall Street. While I fully appreciate the frustrations that Williams Street neighbors experience due to on-street parking demands, I am opposed to the text amendment for two reasons.

First, the text amendment will permanently lead to the loss of a residential lot in Rockville's West End. Expanding Pumphrey's business into the adjoining residential lot will demand the resubdivision and combination of the two lots into one. This action would allow a non-conforming use to permanently affect not one but two lots, thereby influencing any future use at this site. As Rockville experiences pressures on all sides from development, our loss of residential space and the resulting change in character greatly impacts our neighborhoods. While I honor Pumphrey's long tradition as part of our neighborhood, the loss of residential land to a parking lot will not be undone once the lot is built.

Secondly, I believe the lot will not significantly reduce the problems experienced by the Williams Street neighbors. These neighbors are currently inconvenienced when funerals occur at Pumphrey's and parking demands lead to on-street parking. If the text amendment is allowed to go forward, people are likely to continue to park along the street until the adjacent space is filled along Williams Street whether there is an enhanced parking lot available or not since the street parking will seem more convenient than following the stream of traffic into the lot. There is a tendency for people to seek street parking, as we see daily in the Rockville Town Square, because it seems easier to get in and out more readily. Additionally, under current conditions, people coming to a funeral are much more likely to carpool to avoid the parking issue; with an enlarged lot, this motivation to carpool is lost leading to a probable increased number of car trips impacting Williams Street. I really do feel that Pumphrey's has strived to be a good neighbor but the unfortunate truth is that the funeral home's location in the midst of residential streets causes great inconvenience to the neighborhood. Allowing the zoning text amendment will further cause detriment to the neighborhood by taking away another residential lot while doing little to reduce the negative impacts of traffic on a small street.

Many thanks for your attention to this important matter.

Sincerely,
Melissa

Melissa Conway Opryszko
730 Carr Avenue
Rockville, MD 20850
301-717-1720

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CITY CLERKS OFFICE

MARY TYLER VTOL
11 WALL STREET
ROCKVILLE, MD 20850

Exhibit No. 18
TXT2010-00228
Public Hearing: 10/25/10

2010 NOV -5 PM 2:26
November 4, 2010

Subject: Objection to Pumphrey Parking Lot Zoning Text Amendment

Dear Mayor Marcuccio and Members of the Council:

I am writing in opposition to Pumphrey enlarging their parking lot and am asking for your support in declining their request. My reasons opposing are:

1. Expands commercial uses in residential neighborhood
2. Reverses existing H.D.C. use of land
3. Alters the Gateway to Town Center

By way of background I offer the following history:

Forty-two years ago my husband and I purchased our home on Wall Street. At that time we had a neighbor physician who saw patients at his home. Patients parked on both West Montgomery Ave. and Wall St. At the same time we had a non-conforming use funeral home (Pumphrey). In addition, we had a historic psychiatric hospital (Chestnut Lodge) one street over where student nurses walked patients to then Peoples Drug store at the corner of Washington ST and West Montg. Ave. All this took place before the traffic light at Laird ST. and West Montg. Ave. We all got along. It was a neighborhood and Williams ST was still a cut through to Falls RD and W. Montg.

Forty-two years have now passed and we now have more through traffic, no parking on West. Montg. Ave, still a cut through to Falls Rd., no mental hospital yet still a non-conforming use funeral home. True, a non-conforming use does bring neighborhood problems in a residential neighborhood. However, we have continued to be good neighbors in a growing city with Pumphrey. Yes, Wall ST has Pumphrey parking SO WHAT? I don't think there are more funerals/deaths now than 42 years ago – at least I hope not and we now have a traffic light and no parking on Route 28 i.e. W. Montg. Ave.

You now have a decision to make. Whether a non-conforming use should be enlarged, and land converted FOREVER into a parking lot to assist Pumphrey's Funeral Home and 9 homes on Williams ST. Not to sound cold or unneighborly, but this is a bit over the top. Why not do a study for a one-way street on Williams or check out parking only on the sidewalk side before degrading the Western Gateway to our new down town center? Must we jump in with the most extreme solution? Lets remember there are many residential streets where churches, County and Metro parking is also annoying to neighbors. But we don't put in parking lots for them – why then do it in a historical residential neighborhood that is the Western Gateway to the town center?

I urge you to think unemotionally and with your common sense. Look at the law and your city reports. We CAN still have our neighborhood and keep the "Western Gateway" we have been doing it for years!

Thank you for taking the time to read my letter.

Sincerely,

Mary Tyler Vitol
Mary Tyler Vitol

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CITY CLERKS OFFICE

2010 NOV -5 PM 2: 26

Mary Tyler Vitol
11 Wall Street
Rockville, MD 20850

Exhibit No. 19
TXT2010-00228
Public Hearing: 10/25/10

November 5, 2010

Subject: Petition Against Pumphrey Funeral Home Text Amendment

Dear Mayor Marcuccio and Members of the Council:

Attached you will find a petition by 41 residents of the City of Rockville that voice their opposition to the text amendment proposed by the Pumphrey Funeral Home. These residents live overwhelmingly in the immediate vicinity of the funeral home on West Montgomery Avenue, Fall Road, Wall Street, and Thomas Street.

Our opposition is based upon the fact that expansion of a business in the middle of our residential neighborhood is an exceeding bad idea and the development of a parking lot in this location is not in keeping with the historical character of this gateway to the Town Center.

In your deliberations on this matter we ask that you keep our point of view in mind and not change the zoning ordinance to the detriment of the entire West End neighborhood.

Sincerely,


Mary Tyler Vitol


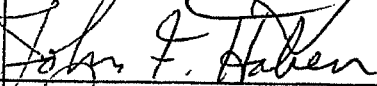
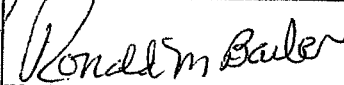
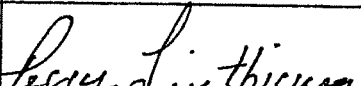
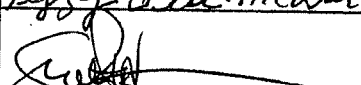
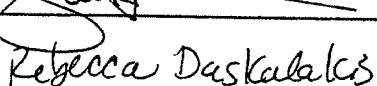

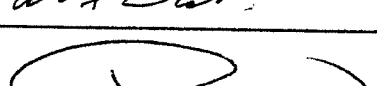

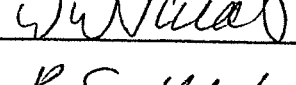
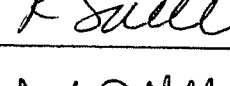
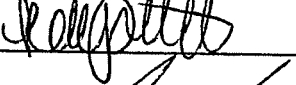
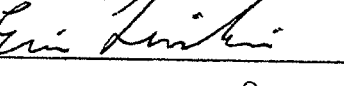
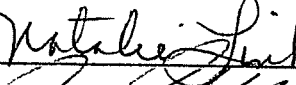

PETITION AGAINST PUMPHREY TEXT AMENDMENT TO ENLARGE PARKING LOT

We the undersigned wish to register our opposition to the zoning text amendment proposed by the Pumphrey Funeral Home to allow the expansion of a parking lot on West Montgomery Avenue.

	PRINTED NAME	ADDRESS	SIGNATURE
1	Susan Hedges	106 Wall St. Rockville MD 20850	<i>Susan Hedges</i>
2	Kyle Hedges	"	<i>L. Kyle Hedges</i>
3	David Lide	16 Wall St Rockville MD 20850	<i>David Lide</i>
4	Jacqui Porth	307 W. Montgomery Ave	<i>Jacqui Porth</i>
5	ARTHUR RIPINSKI	307 W. MONTGOMERY AVE	<i>Arthur Ripinski</i>
6	Margaret May	301 W. Montgomery Ave	<i>Margaret May</i>
7	Stephen Norris	501 W. Mont. Ave.	<i>Stephen Norris</i>
8	Andrew Sellman	411 W. Montgomery Ave	<i>Andrew Sellman</i>
9	Ruth Shewen	304 Great Falls Rd.	<i>Ruth Shewen</i>
10	Rose Sharkey	308 Great Falls Rd.	<i>Rose Sharkey</i>
11	William Sharkey	308 Great Falls Rd	<i>William Sharkey</i>
12	G. Tyler Peter	102 N. Adams St Rockville, MD 20850	<i>G. Tyler Peter</i>
13	Glenn J. Harrison	115 Upton St.	GLENNON J. HARRISON
14	MARYANN HARRISON Maryann Harrison	115 Upton St	<i>Maryann Harrison</i>
15	Sarah A. Backus Sarah A. Backus	106 Upton St	<i>Sarah A. Backus</i>

PETITION AGAINST PUMPHREY TEXT AMENDMENT TO ENLARGE PARKING LOT

We the undersigned wish to register our opposition to the zoning text amendment proposed by the Pumphrey Funeral Home to allow the expansion of a parking lot on West Montgomery Avenue.

	PRINTED NAME	ADDRESS	SIGNATURE
1	Charles May	301 W Montgomery Ave	
2	John F. Haben	832 Crothers Lane	
3	RON BARBER	1212 AUTRE COURT	
4	PEGGY LINTHICUM	15 WALL ST	
5	SCOTT ROBINSON	400 W. MONTGOMERY	
6	Rebecca Daskalakis	8 Thomas St.	
7	ALEX DASKALAKIS	8 THOMAS ST.	
8	CHRIS LAND	103 WALL ST.	
9	DAVE SAULT	102 WALL ST.	
10	Kathy Sault	102 WALL ST.	
11	Kelly Sault	102 WALL ST.	
12	Eric Linkins	109 Wall St.	
13	Natalie Linkins	109 Wall Street	
14	Bruce Punkett	419 West Montgomery Ave	
15	Terrence Schemp	417 W. Montgomery Ave	

PETITION AGAINST PUMPHREY TEXT AMENDMENT TO ENLARGE PARKING LOT

We the undersigned wish to register our opposition to the zoning text amendment proposed by the Pumphrey Funeral Home to allow the expansion of a parking lot on West Montgomery Avenue.

	PRINTED NAME	ADDRESS	SIGNATURE
1	MARY TYLER VITOR	11 WALL ST 20850	Mary Tyler Vitor
2	SANDIE LEE DEIGHTON	402 W. Montgomery Ave	Sandie Lee Deighton
3	Benjamin Hoog	402 W. Montgomery Ave	Ben Hoog
4	Terence J. Griffin	10 Thomas Street	Terence J. Griffin
5	Greg Duesken	10 Thomas St	Greg Duesken
6	MAUREEN PRETTYMAN	318 W. MONTGOMERY AVE	Maureen Prettyman
7	VANCE A. KING	" " "	Vance A. King
8	Jeremy A. Fleisher	629 Blossom Drive Rockville, MD	Jeremy A. Fleisher
9	Stacia Fleisher	629 Blossom Dr. Rockville, MD	Stacia Fleisher
10	Rachael Hamm Prett	630 Blossom Dr. Rockville MD	Rachael Hamm Prett
11	Anita Poloff	10704 Lady Slipper Terrace Rockville MD 20852	Anita Poloff
12			
13			
14			
15			

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October 29, 2010.

2010 NOV -5 PM 2:50

TO THE MAYOR AND COUNCIL OF ROCKVILLE MARYLAND

Exhibit No. 20
TXT2010-00228
Public Hearing: 10/25/10

My name is Nadia Azumi. My family and I reside at 6, Nocturne Court in Rockville.

I am the Vice President of Rose Hill Falls HOA as well as Block Captain for the West Citizen Association. I am not representing anybody except myself, and speaking on behalf of all affected residents on William Street.

I wanted to present my points at the Mayor and Council the other evening, however I was not able to do so due to the time.

I am writing to support the extension of the Parking lot for the Pumphrey Funeral Home.

Having attended 2 meetings at WECA on this regard, I have heard many people giving their opinion.

The majority on both meetings were for the parking as this is an issue that will resolve many problems.

Here is what I heard and this is what I too think should be considered.

1. Those who oppose the parking are not directly affected by it. Therefore it is very easy to oppose.
2. The Pumphrey Funeral Home has been there on that lot since the 1800.
3. It is part of Historical Rockville and the land belongs to them.
4. Where the old building used to be it is still part of the Funeral Home and the owners do not intend to build another house there, either now or in the future.
5. 47 parking spaces will be built in the old house lot and will be covered with adult big trees.
6. This will not affect the amount of people attending the funerals as the maximum amount of people that the house can hold is 120.
7. The bigger funerals will be held in Bethesda.
8. Noise wise, this is not a bar or night club.
9. All the residents in William Street have complained that their cars were hit some even 4 times, in order to park on the street.
10. Driveways were constantly blocked and people had to go to the funeral house and ask the valet to remove the cars.
11. This is an extremely small street William Street with both way traffic. It is dangerous to double park.
12. The neighbors all had praise for the way the Pumphrey staff were considerate as well as kept the property in excellent shape.

I have learned one thing in life and it is ; there are exception to everything, and I sincerely think that you should considered the well being and safety of all the residents as well as the staff at Pumphrey before making your final decision.

I thank you for your time and I hope that you will consider my thoughts.

After all we are all leaving in Rockville one of the top Cities.

Nadia Azumi

A handwritten signature in black ink, appearing to read 'Nadia Azumi', with a stylized flourish extending to the right.

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CITY CLERKS OFFICE

Exhibit No. 21
TXT2010-00228
Public Hearing: 10/25/10

2010 NOV -5 PM 3: 05

NOVEMBER 5, 2010

Mayor and Council

Responding to the Public Hearing regarding Pumphrey Funeral Home, I must give a brief history that includes my input and observations. I have lived or worked in Rockville since 1963. In the early 1970's, Pumphreys request for additional parking came up; at that time I was a head nurse at Chestnut Lodge. In a small discussion group that comprised of Doctors and Nurses at Chestnut Lodge, the proposal of Pumphreys was discussed. We observed during the discussion group that a significant amount of the opposition to the proposal for the overflow parking stemmed from unresolved issues amongst families in the community. Then in 1981 my husband and I moved to the Westend where we still live at 111 North Van Buren Street behind the Beall Dawson House. Our land is listed as Lots 4 and 5 of the Beall's subdivision. My husband and I joined WECA in 1981. I have held positions in WECA of Treasurer, Secretary, and President while I continue serving as Block Captain since 1985. During the 1980's this discussion regarding Pumphrey's request came up within the Association. However, there was no resolution of the request and the issue was tabled prior to any public hearing on the matter. Now the situation has changed. The immediate neighborhood has come together and expressed a definitive position YES to this proposal. The residents of Thomas Street are totally united in their desire that this request be accepted. The immediate neighbors across West Montgomery Avenue and Forest Avenue have also given their approval. I, personally, heard the

deliberations at our WECA General Membership Meeting and testimony before Mayor and Council in 2010. In fairness to all hearing this issue, this is truly not 1972 but 2010. I ask that you support the people of Thomas Street as well as the immediate neighbors bordering West Montgomery Avenue and Thomas Street. Keeping in mind, the immediate neighbors directly across West Montgomery Avenue and Forest Avenue share this view and wish that this overflow parking request for Pumphrey's be approved.

Thanking you in advance for your consideration.

A handwritten signature in cursive script, reading "Theresa Podewil". The signature is fluid and elegant, with a large, sweeping initial 'T'.



LAW OFFICES
MILLER, MILLER & CANBY

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SOO LEE CHO (CA)
AMY C. GRASSO

**All attorneys admitted in Maryland and where indicated*

SLCHO@MMCANBY.COM

November 5, 2010

Mayor and Council
City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

RE: Text Amendment Application TXT2010-00228

Dear Madame Mayor and Members of the City Council:

The following is submitted as a supplemental to testimony provided on behalf of the Applicant at the October 25th Mayor and Council's public hearing on the above referenced Text Amendment application.

We write to once again urge that the Mayor and Council vote to approve TXT2010-00228. Much has been made of the fact that the Pumphrey Funeral Home is a non-conforming use and that non-conforming uses are generally supposed to be allowed to "wither and die" by those opposed to the proposed parking lot.

However, the Text Amendment's specific reference to the date of the City's first enactment of a zoning ordinance (August 3, 1932) is intended not only for the purpose of narrowing the Text Amendment's potential applicability to the Pumphrey situation to the maximum extent allowable, but also intended to serve as recognition of the fact that what we are dealing with in this case is an atypical non-conforming use – one that has been in continued existence for so long that it also holds the distinction of being a historically designated use. The City's inclusion of the funeral home within the West Montgomery Avenue Historic District has in many ways helped to support and preserve its continued existence, clearly setting it apart from other non-conforming uses.

Moreover, it is also a proven fact (proven to be true over the past 80 years) that the funeral home's continued existence does not depend upon its ability to expand its existing parking lot.

Therefore, the bottom line issue that remains for the Mayor and Council is whether to allow Pumphrey Funeral Home (a non-conforming use that almost all would agree not only will, but should continue to exist) the ability to try to help alleviate a known parking problem that has been impacting the quality of

life of its closest neighbors. The expanded parking lot may not completely eliminate parking on the adjacent streets, but common sense tells us that it will mitigate to a significant degree the extent of the on-street parking that occurs today.

The funeral home use (the size and frequency of funeral services and/or viewings) is defined by the assembly space that currently exists within the building, not by the number of spaces in the parking lot. [It should be noted that the proposed Text Amendment does not alter the fact that under no circumstances could the Pumphrey funeral home structure itself be expanded under existing Zoning Ordinance provisions (see Section 25.08.05.b.2.).] The expanded parking lot will simply take the cars that are coming to the site currently as a result of what the existing building can accommodate, off the streets and put them on the site as much as possible.

If the proposed text amendment is approved by the Mayor and Council, under existing Zoning Ordinance provisions, the parking lot expansion plan must go through a Level 2 Site Plan review pursuant to the Non-Conforming Alteration Approval process found in Section 25.08.08 of the Zoning Ordinance. Under that process, the Planning Commission and Historic District Commission will review issues relative to the parking lot's design and residential compatibility in terms of layout, size/number of spaces, lighting, landscaping, etc.

Finally, as noted at the Mayor and Council's public hearing, the Applicant does not object to further limiting the Text Amendment's applicability to the R-90 Zone as suggested by Staff. However, we would request that a concept from the originally submitted version of the Text Amendment be inserted back into the text such that the revised Text Amendment language if approved would read as follows:

"Where a nonconforming use has been in continual existence in the R-90 Zone within the City since prior to August 3, 1932, off-street parking for the nonconforming use may be altered, expanded or enlarged on the parcel and/or on an adjacent parcel in accordance with the requirements of Article 16 and the Landscaping, Screening and Lighting Manual."

The above revised language would allow construction of the proposed parking lot without having to plat the two existing parcels of land into one large lot; thereby, addressing a concern that was raised by some members of the Planning Commission.

Thank you for your consideration of these additional comments.

Sincerely yours,

MILLER, MILLER & CANBY


Soo Lee-Cho

cc: Scott Ullery
Susan Swift
Jim Wasilak
Deane Mellander
William Pumphrey
William Doggett

Pumphrey's Funeral Home Text Amendment
Susan Prince

to:

'Mayor and Council'

11/05/2010 04:04 PM

Show Details

Madam Mayor and members of the Council,

I am writing to you this afternoon regarding the proposed text amendment to permit a parking lot at Pumphrey's Funeral Home.

As you know, I spoke before the Mayor and Council at the public hearing as a representative of the West End Citizen's Association. I am writing you today as a private citizen.

I am NOT in favor of the text amendment and request that you deny the application.

My reasons are as follows:

1. There is a well-founded rationale why most zoning ordinances prohibit/restrict commercial uses within residential areas. Commercial activity brings in traffic from outside the neighborhood, along with associated noise and pedestrian safety issues and is generally not compatible with residential neighborhoods. This text amendment allows Pumpheys to expand their business – in direct opposition to what is generally accepted as good zoning practices. If anything, efforts should be taken to restrict their business, not create an environment where they can expand it.
2. I am not convinced that expanding the parking lot will alleviate the traffic/parking issue on Wall Street. Currently parking is allowed on both sides of the street, and this amendment does not restrict on-street parking in any way. In all likelihood, individuals will continue to park on the street, residents will continue to be inconvenienced, a residential lot within the historic district area will be lost, and the vista along W. Montgomery will be forever marred by a parking lot. All this effort will be to no avail as patrons continue to seek the easy parking solution along Wall Street.

I am extremely sensitive to the residents along Wall St. I live very near by Pumphrey's and have tried to navigate Wall St. when an event is being held. I know first-hand how crowded the street gets – and can imagine it's frustrating for residents who have to contend with cars parked everywhere and pedestrians crossing the street.

However, I also strongly believe (based on conversations with Pumphrey's and City staff) that other less drastic and permanent solutions have not been adequately explored and/or implemented. Restrictive parking, better signage, street markings, additional sidewalks, expansion of valet parking, re-configuring or restricting traffic (perhaps only during funerals/wakes) are just a few ideas that warrant further exploration.

Implementing a text amendment, increasing the size of the parking lot should be considered last resort efforts.

Let's figure out how to resolve the issue without setting a precedent that goes directly in the face of good zoning practices.

Respectfully,

Susan Prince

D-49

President

Cadence Marketing

Strategies for Growth

Good Ideas - Better Implementation

Follow me on Twitter: @CadenceMarket

Join our Facebook page: @Cadence Marketing

sprince@cadencemarketing.com

www.cadencemarketing.com

(301) 340-2520

October 25, 2010

Attention: Mayor and Council of Rockville

We reside at 310 W. Montgomery Ave., the only property that directly adjoins 304 W. Montgomery Ave., the lot on which Pumphrey Funeral Home has proposed to build a parking lot, if the Text Amendment before you this evening passes. We strongly oppose the Text Amendment and respectfully request that you deny it, as has been recommended by the Planning Department, Planning Commission, Historic District Commission, and Peerless Rockville.

Before we talk about what this proposed Text Amendment is and the negative impact that it will have not only on us directly, but on the historic character and nature of the West End as a whole, we want to take a few moments to talk about what this Text Amendment and situation is not.

- Not an attack on Pumphrey. Our opposition to this Text Amendment is not about trying to put Pumphrey out of business. Pumphrey has been a good neighbor and we have absolutely no issue with them continuing to operate as they have for approximately the last 80 years. Pumphrey's property is well-maintained and is immediately recognizable to people passing through the West End, in part because it is surrounded by a beautiful, open grassy area. What we have an issue with is Pumphrey significantly impacting our property and the feel and character of the West End as a whole by building a massive parking lot 7 feet from our property line that takes up almost the entirety of the current grassy area that comprises 304 W. Montgomery Ave.
- Not to bring Pumphrey "up to code." Pumphrey has alleged that this Text Amendment is essentially to bring them "up to code" with Rockville parking requirements. This is not true. Pumphrey is operating legally as a non-conforming use and there is no need to bring their parking "up to code" currently. If, however, you pass the Text Amendment and change the law, Pumphrey will need to bring their parking up to code. As the Text Amendment is currently drafted, this will result in a substantial parking lot comprised of somewhere between 47 and 52 parking spaces.
- Not disregarding the concerns of our neighbors. As you will learn, the vote of the West End Citizens' Association on Pumphrey's proposed Text Amendment was fairly split, not surprisingly so, as the way that Pumphrey currently handles its parking has a negative impact on some of our neighbors – primarily those on Williams Street, as well as some on Forrest Avenue. Although we have been opposed to the proposed parking lot since we first heard about it, we in fact entered into discussions with Pumphrey in an attempt to find a solution that might resolve both our concerns and the concerns of our neighbors. We cannot provide you with specifics as our discussions were in the context of settlement proposals, but despite our attempts to reach a reasonable compromise, we were not able to come to an agreement with Pumphrey.

Now, turning to what this Text Amendment and situation is.

- Drastic shift in Rockville's approach to non-conforming uses and bad precedent. Pumphrey operates in its current location at 300 W. Montgomery Ave. as a non-conforming use. Because Pumphrey was operating prior to the current zoning laws, it is allowed to continue to operate on the 300 W. Montgomery Ave. lot for as long as it remains in business. Pumphrey also owns the lot located at 304 W. Montgomery Ave, which is zoned R90 and can only be used for residential purposes. Non-conforming uses cannot expand under current Rockville zoning laws. That means that Pumphrey is not allowed to expand its operations at its current location at 300 W. Montgomery Ave. What Pumphrey is seeking to do would not only allow them to expand their non-conforming use, it would allow them to expand into an adjoining property that is not currently a part of its non-conforming use. If you approve the Text Amendment, you would be marking a drastic shift in Rockville's approach to non-conforming uses and setting a precedent to allow other non-conforming uses in the city to seek Text Amendments or use this text amendment to expand as well. Pumphrey seems to suggest that it should be rewarded with the ability to build a parking lot because it is a non-conforming use that has flourished over the years. It is great for Rockville that Pumphrey has flourished and Pumphrey has indicated that it does not need this Text Amendment to continue to operate and flourish. Pumphrey should not, however, be allowed to increase and expand its non-conforming use by using their successful operation as justification.
- Interestingly timed. To the best of our knowledge, the lot at 304 W. Montgomery Ave. has existed as an open grassy area for approximately 40 years. A house existed on this lot previously, but is believed to have been ordered demolished by the city in the early 1970s. Pumphrey applied to be allowed to build a parking lot on this lot in 1971, but withdrew its application. Pumphrey applied again to build a parking lot on this lot in 1972, but the request was denied by the Mayor & Council in 1973. Then, for the last almost 30 years, Pumphrey has maintained the lot as an open grassy area. Throughout all of Pumphrey's early efforts to build a parking lot up until the middle of 2008, 310 W. Montgomery Ave. was owned by Dr. Gordon Rosenberger. Dr. Rosenberger strongly opposed Pumphrey's efforts to build a parking lot at 304 W. Montgomery. We purchased 310 W. Montgomery Ave. from Dr. Rosenberger in the middle of 2008. Less than a year later, Pumphrey reinitiated its efforts to put in a parking lot at 304 W. Montgomery Ave. We believe this is at least in part because they thought we may not have been prepared or sufficiently informed to oppose them.
- Only partially to help Williams Street. Pumphrey currently has a total of 17 parking spaces in its existing lot, which is set behind its location at 300 W. Montgomery Ave. When attendees exceed the number of parking spaces, Pumphrey offers valet parking and parks attendees' cars on both sides of Williams Street and sometimes across West Montgomery Ave. on Forrest Ave. This can result in a few issues – when cars are parked on both sides of Williams Ave., it can be difficult for two-way traffic to pass through and resident driveways can be blocked. Pumphrey has indicated that its Text Amendment is primarily motivated by a desire to help our neighbors on Williams Street with these issues. Realistically, Pumphrey is a business and its interest in building a parking lot is not altruistic. Granted, it has the effect of helping the situation on Williams Street, but Pumphrey would not be investing the time and money needed to build a parking lot if it

would not benefit its business. In fact, Pumphrey has publicly indicated before the Planning Commission that they may not be willing to proceed with a parking lot that is smaller than the one it has proposed thus far (47 parking spaces), as it may not be cost effective for them to do so.

- It is Relevant for You to Consider the Proposed Parking Lot Designs and Pictures. You will likely hear from Pumphrey that it is not appropriate for you to consider the design, scale, and landscaping of the proposed parking lot at this time. While it is true that you are not deciding these issues at this time, it is relevant for you to give some consideration to the sketches and pictures that Pumphrey has circulated publicly, as they give context to what Pumphrey will propose if you pass this Text Amendment.
- Proposed Parking Lot Designs Reflect a Lot that Will Significantly Impact Our Property and the West End. Our property and the West End will be significantly negatively impacted if you approve Pumphrey's Text Amendment. Foremost, it will shift a condition that exists occasionally for certain hours on certain days of the year to a condition that will exist 24 hours a day, 7 days a week. The setbacks from the property line of 310 W. Montgomery Ave. are minimal, with the majority of the proposed parking lot coming only 7 feet from our property line (and therefore very close to our house). This seems to be much closer than a residential property would be permitted to build along the property line. And, as this will not be a residential property, but a parking lot, we will be subjected to the noise of cars coming and going and car doors closing. We do not suggest visitors to Pumphrey's would generally be speaking loudly or in any other mood than somber when arriving or leaving the parking lot. Services can last as late as 9pm and, as Pumphrey has indicated, people are often allowed to stay later than that. Even if Pumphrey's installs low lighting, as they have proposed, this will be visible from our house (among other things, our Master Bedroom would directly overlook the parking lot, even if mature trees were eventually present). We will additionally be subject to the headlights of cars coming and going. The parking lot would comprise the vast majority of a lot that is over 21,000 square feet and would extend along the length of our house and along the majority of our backyard. Additionally, the landscape pictures that have been submitted show very mature trees and greenery and, not surprisingly, look very green, given that a parking lot and cars are not depicted. Pumphrey has indicated that it would use a pervious surface for the parking lot to prevent run-off, but it has provided no environment study or support to show that the parking lot would not have a negative environmental impact. 304 W. Montgomery Ave. is higher ground both than 310 W. Montgomery Ave., as well as West Montgomery Ave. itself. As you may know, historic houses surrounding Pumphrey already suffer from groundwater issues and West Montgomery can also be subject to standing water in heavy rains. It is possible that the parking lot will make these existing conditions even worse.
- Pumphrey has not provided evidence to show that the proposed parking lot would alleviate any of the existing conditions. Pumphrey alleges that this parking lot will help alleviate the current parking issues on Williams Street and Forrest Ave, but it has provided no evidence to show this would be the case. In fact, the parking lot could make the situation worse. Having 47 to 52 parking spaces may lead to Pumphrey being able to

host more services and to increased business at its Rockville location. The proposed parking lot could have the effect of simply altering the nature of the traffic and parking, but not reducing it and potentially increasing it. Where would 47 to 52 cars line up for a funeral procession? Along Williams? Along West Montgomery? Pumphrey has not provided a traffic study to support that this would alleviate the issue on Williams Street. With respect to landscaping, it seems that the parking lot either will be visible from West Montgomery, thereby exposing passerbys to a vast parking lot filled with as many as 47 to 52 cars, or it will be completely shielded, in which case it will look out of place with the properties along West Montgomery, which are generally open for viewing, and could become an unintended assembly place for individuals after hours, as it would be hidden from view, with the exception of from our house.

- Pumphrey could explore other alternatives. There are other potential solutions to the parking situation that would avoid the need for a parking lot at 304 W. Montgomery Ave. For example, Williams Street could be made one way; this should help to prevent cut-through traffic and reduce both the overall traffic on the street and the situation in which cars "play chicken" with traffic trying to drive in both directions with cars parked on the street. Parking permits could be issued to prevent non-valet parking on the street. A crosswalk can also be installed on West Montgomery at Forrest Avenue to improve the pedestrian safety for Pumphrey's attendees and residents alike. Pumphrey has indicated that it does not make business sense for it to sell 304 W. Montgomery Ave. and allow a residence to be constructed there and that, if it cannot build a parking lot, the other option is essentially the status quo. We would be fine with the status quo of the open grassy area. Interestingly, Pumphrey has indicated that one of the reasons it would not sell 304 W. Montgomery Ave. for a house to be built there is because it would likely give a neighbor a reason to object to its operations. However, Pumphrey thinks it is appropriate to approach our existing historic house that has been in place since 1887 with a parking lot a mere 7 feet from the associated property line.
- Future impact. Pumphrey has indicated that it is not going anywhere and will continue to operate unaffected if this Text Amendment does not pass. However, what would happen if you approve this Text Amendment and Pumphrey does close its doors? The West End will likely forever have a massive parking lot at 304 W. Montgomery Ave. Any landscaping put in place to shield the parking lot could die or be removed. And it could open the door for other non-residential uses to seek to replace Pumphrey.

Pumphrey's proposed parking lot is incompatible with Rockville's historic treatment of non-conforming uses and the historic nature and character of the West End. And it would shift an occasional situation that is dispersed across Williams Street and sometimes Forrest Avenue in part directly on us at 310 W. Montgomery Ave. and, moreover, the existing situation on Williams Street and Forrest Ave. may continue. Therefore, we respectfully ask that you deny this Text Amendment.

Sincerely,

Phil and Meg Bowen